

Waste Management and Radiation Control Board Meeting
Utah Department of Environmental Quality
195 North 1950 West (Conference Room #1015) SLC, Utah
October 13, 2016
1:30 p.m.

Board Members Present: Brett Mickelson (Chair), Danielle Endres, Jeremy Hawk, Alan Matheson, Steve McIff and Vern Rogers

Board Members Participating Telephonically: Richard Codell and Mark Franc

Board Members Absent: Dennis Riding (Vice Chair), Shawn Milne and Shane Whitney

Staff Members Present: Scott Anderson, Brent Everett, Ralph Bohn, Doug Hansen, Arlene Lovato, Rusty Lundberg, Deborah Ng, Rick Page, Jerry Rogers, Elisa Smith, Don Verbica and Otis Willoughby

Others Present: Sawyer Hill, Tim Orton, Dan Shrum, Brent Snelgrove and Ashley Soltysiak

Others Participating Telephonically: Dr. Erik Natkin

I. Call to Order.

Brett Mickelson (Chair) welcomed all in attendance and called the meeting to order at 1:30 p.m. Shawn Milne and Shane Whitney were excused from the meeting. Richard Codell, Mark Franc and Dr. Erik Natkin participated telephonically.

II. Introduction of Nathan Rich – New Board Member

Mr. Rich is the Executive Director of Wasatch Integrated Waste Management District which operates a Solid Waste Landfill and Waste to Energy Facility in Davis County. Mr. Rich fills the vacancy left by Dwayne Woolley and serves as one of two non-federal government representatives on the Board.

III. Approval of the Meeting Minutes for the September 8, 2016 Board Meeting.

It was moved by Danielle Endres and seconded by Vern Rogers and UNANIMOUSLY CARRIED to approve the September 8, 2016 Board meeting minutes.

IV. Underground Storage Tanks Update.

Brent Everett, Director of the Division of Environmental Response and Remediation (DERR), informed the Board that the cash balance of the Petroleum Storage Tank (PST) Trust Fund at the end of August 2016 was \$17,974,397.00. The preliminary estimate for the cash balance of the PST Trust Fund for the end of September 2016 is \$16,972,968.00. The cash balance of the PST Trust Fund is watched closely to ensure sufficient funds are available in the PST Trust Fund. There were no questions on the PST Trust Fund balance.

V. Administrative Rules.

A. Final adoption of repeal of Rule R313-27, “Medical Use Advisory Committee” (Board Action Item).

Ralph Bohn, Section Manager, Planning and Technical Support Section, reviewed the request to approve the repeal of Rule R313-27 “Medical Use Advisory Committee” and set an effective date.

R313-27 was adopted by the Radiation Control Board in its final meeting in June 2015. This rule requires the Board to appoint a Medical Use Advisory Committee to review any rule or other policy that affects the medical use of radiation and to make a recommendation to the Board on the proposed rule. The rule establishes the makeup of the committee and requires the committee to report to the Board prior to any Board action on a rule related to the medical use of radiation.

The Attorney General’s Office has determined that the Radiation Control Board did not have the authority to promulgate R313-27. (See memorandum from Craig Anderson, Assistant Attorney General, that was provided in the July 14, 2016 Board packet).

The proposed repeal of R313-27 was published in the September 1, 2016 Utah Bulletin. Comments received along with the letter sent to the Board prior to the July 14, 2016 meeting were included in the October 13, 2016 Board packet. The Director’s response to the comments on the proposed repeal of R313-27 was provided to the Board in a separate e-mail document, dated October 12, 2016.

Alan Matheson, Executive Director, Department of Environmental Quality explained that the proposal to repeal R313-27 arises from a technical legal concern about the Board’s authority to create the Medical Use Advisory Committee, not from any failure to recognize its value.

Mr. Matheson stated that, because the Board and Division staff do not have expertise in every issue that comes before the Board, the goal is to establish a workable and legal mechanism to ensure the Board and staff have sound information on medical radiation before making decisions in that area. However, because the Attorney General’s Office has determined that the Board did not have the legal authority to promulgate a rule to create a Medical Advisory Committee, the UDEQ now has to be compliant with the law and act within its authorities. The UDEQ has every intention of identifying appropriate ways to gather input on the medical use of radiation. At this time, the matter at hand has to address the legal authority of the Board and the request to approve the repeal of Rule R313-27.

It was moved by Steve McIff and seconded by Nathan Rich and carried for the Board to approve the repeal of R313-27. Brett Mickelson, Danielle Endres, Mark Franc, Jeremy Hawk, Alan Matheson and Vern Rogers voted in favor of the motion. Richard Codell voted against the motion.

Richard Codell noted that all comments received were against the repeal of R313-27 and felt that an alternative should be in place to ensure matters are handled adequately in the future.

Vern Rogers stated that, as he read the information/comments from last year, it was determined that the Board had the authority to create R313-27. Mr. Rogers asked if it is common to have opposing opinions from the Attorney General’s Office.

Mr. Bohn stated that the legal opinion at the time the rule was promulgated was based on a similar provision enacted by the Water Quality Board. The Attorney General’s Office has researched that rule

and also determined that the Water Quality Board will have to withdraw its rule. The Division of Water Quality has been notified that their rule did not have a legal basis and will have to be repealed.

Danielle Endres asked if the Division has any plans to make a more formalized committee as Board members would like participation by experts when they desire it. Mr. Matheson stated that the Department can establish committees and he is open to that idea. However, there are some complications with that concept, such as deciding which issues need what outside expertise, if any, or creating committees with lots of people but without having any issues for months or years. There are a number of other ways to gather input and the exact form it takes may vary, but the fundamental principle is finding the best way to get the most relevant information for the Board before a decision is made. Mr. Matheson asked for ideas other than just a formalized committee.

Richard Codell suggested a medical use advisory group could be formed to be available when needed; but not place an undue burden on the State of Utah. Mr. Matheson reiterated his openness to recommendations from the Board for his consideration.

Scott Baird, Director of Legislative and Government Affairs, Utah Department of Environmental Quality, informed that Board that he has been involved in discussions with Mr. Peter Jenkins on this matter and committed to sit down with Mr. Jenkins and others to see what solutions could be considered.

VI. Used Oil Program.

A. Approval to proceed with formal rulemaking and 30-day public comment period for Used Oil Rule, R315-15-13 (Board Action Item).

Deborah Ng, Hazardous Waste Section Manager, reviewed the request for the Board to approve for publication in the Utah Bulletin and commencement of a 30-day public comment period, the proposed changes to the Used Oil Rule, R315-15-13.

R315-15-13 is the section of the Used Oil Program Rules that covers the registration and permitting of used oil handlers.

Subsection R315-15-13.4(f) allows generators of used oil to transport quantities exceeding 55 gallons under a permit by rule. The permit by rule exemption is limited to facilities that fall within certain North American Industry Classification System codes.

The Division has been approached by Rocky Mountain Power asking if the utilities sector code could be added to the list in the rule. Rocky Mountain Power generates large amounts of used oil, some of which is located in remote locations where it is difficult or impossible to get a used oil transporter to pick up the oil.

This change would allow the utility to transport its own oil under permit by rule. The change also updates the reference to the current version of the North American Industry Classification System.

It was moved by Nathan Rich and seconded by Danielle Endres and UNANIMOUSLY CARRIED to approval to proceed with formal rulemaking and 30-day public comment period for Used Oil Rule, R315-15-13.

Danielle Endres asked if the utilities transporting their used oil themselves will be held to the same standards as others transporters. Ms. Ng explained that they would need to meet the same standards.

Ms. Endres also asked if there is any higher risk in allowing them to transport it on their own. Ms. Ng said no.

Richard Codell asked if the oil contained PCBs. Ms. Ng explained that the oil does contain PCBs but the concentration is less than 50 ppm. Transporting oil with PCBs over 50 ppm would subject the transporter to other TSCA requirements.

VII. X-Ray Program.

A. Request for Exclusion from certain requirements of R313-28-31(5) (Board Action Item).

Ralph Bohn informed the Board that Dr. Erik Natkin has requested an exemption from Rule R313-28-31(5). This rule governs the use of x-rays in the healing arts and reads: "Portable or mobile equipment shall be used only for examinations where it is impractical to transfer the patient to a stationary radiographic installation."

The basis for the exemption request was provided in a letter to the Director received September 2, 2016. The letter was included in the October 13, 2016 Board packet. The Division requested comments on the exemption request from several radiation safety officers and other health care professionals in the state. No comments were received.

Mr. Bohn recommended that the Board grant the exemption with the following language in the motion for approval: "The request of Dr. Erik Natkin for an exemption from R313-28-31(5) is granted. The exemption has no expiration date. The exemption granted by the Board is from the requirements of R313-28-31(5) only and not from any other applicable part of R313-28, including the plan review requirements of R313-28-32, the operator protection requirements of R313-28-52(8)(b) and the source-to-skin distance limit of R313-28-53."

Mr. Bohn noted that two other machines in the State of Utah like this have been grandfathered into the rules.

Dr. Erik Natkin explained his reasons for the exemption request and his intent to position and use this device in a designated shielded room, practically making it a stationary device and thus compliant with potential radiation exposure management dictated by Utah Code.

It was moved by Steve McIff and seconded by Jeremy Hawk and UNANIMOUSLY CARRIED to approve Dr. Natkin's request for exclusion from certain requirements of R313-28-31 (5). Specifically, this approval is only for using a portable machine in a permanent location. Dr. Natkin is subject to all other requirements of R313-28-31(5).

VIII. Other Business.

- A. Misc. Information Items. – None to Report.
- B. Scheduling of next Board meeting.

The next Board meeting is scheduled for November 10, 2016 at 1:30 p.m. at the Utah Department of Environmental Quality, 195 North 1950 West, Salt Lake City, Utah.

IX. Adjourn.

The meeting adjourned at 2:04 p.m.